

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

GAMZE CAKARCAN,

Plaintiff and Appellant,

v.

LAW OFFICES OF STEVEN STOLER
AND ASSOCIATES, LLP, et al.,

Defendants and Respondents.

B234359

(Los Angeles County
Super. Ct. No. BC440133)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Susan Bryant-Deason, Judge. Affirmed.

Gamze Cakarcan, in pro. per., for Plaintiff and Appellant.

Stolar & Associates, Steven R. Stolar, Evan L. Bardo for Defendants and
Respondents.

Plaintiff Gamze Cakarcan appeals the judgment entered in favor of defendant Law Offices of Steven Stoler and Associates. The trial court ruled that plaintiff's second amended complaint for legal malpractice was time-barred, and sustained defendant's demurrer without leave to amend. Finding no error, we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In November 2006, plaintiff retained defendant to represent her in two lawsuits concerning her then (now former) husband and the custody of their children. Defendant ceased to represent plaintiff in the custody matter on January 10, 2007 and in the dissolution action on February 9, 2007 upon the filing of Substitutions of Attorney. The judgment in the custody matter was entered on December 2006, while the judgment in the dissolution action was entered on February 21, 2008. Plaintiff filed her complaint for legal malpractice¹ on June 22, 2010, over one year after the entry of judgment in the underlying actions on which the malpractice claims are based. Thus, pursuant to Code of Civil Procedure section 340.6 and *Laird v. Blacker* (1992) 2 Cal.4th 606, 609, absent tolling of the statute of limitations, plaintiff's claims were time-barred.

Plaintiff twice amended her complaint. In her second amended complaint, plaintiff alleged that she "suffered from disability from about 2007 to 2009, which limited her functional mental and physical capacity to work, carry out her daily activities and/or pursue any legal action" Defendant demurred, contending that the complaint failed to allege facts sufficient to support tolling of the limitations period. In support of its demurrer, defendant requested that the court take judicial notice of the court records in plaintiff's dissolution action, in order to establish that plaintiff had pursued and participated in that action, thereby contradicting the allegation that she suffered from a

¹ The complaint alleged causes of action for breach of fiduciary duty and breach of contract as well as for legal malpractice. Because all three causes of action seek damages based on defendant's negligent or inadequate legal representation, they are alternative ways of stating a claim for legal malpractice. (See, e.g., *Lynch v. Warwick* (2002) 95 Cal.App.4th 267, 270.)

disability which restricted her ability to commence this malpractice action until 2009. The trial court sustained the demurrer and entered judgment in favor of defendant. Plaintiff timely appealed the judgment.

STANDARD OF REVIEW

Our Supreme Court has articulated the standard of review applicable to this appeal as follows: "In reviewing the sufficiency of a complaint against a general demurrer, we are guided by long-settled rules. 'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.' (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. (*Speegle v. Board of Fire Underwriters* (1946) 29 Cal.2d 34, 42.) When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. (See *Hill v. Miller* (1966) 64 Cal.2d 757, 759.) And when it is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. (*Kilgore v. Younger* (1982) 30 Cal.3d 770, 781; *Cooper v. Leslie Salt Co.* (1969) 70 Cal.2d 627, 636.) The burden of proving such reasonable possibility is squarely on the plaintiff. (*Cooper v. Leslie Salt Co.*, *supra*, at p. 636.)" (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

DISCUSSION

Code of Civil Procedure section 340.6, subdivision (a)² provides: "An action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services shall be commenced within one year after the

² All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission, or four years from the date of the wrongful act or omission, whichever occurs first. . . . [I]n no event shall the time for commencement of legal action exceed four years except that the period shall be tolled during the time that any of the following exist: [¶] (1) The plaintiff has not sustained actual injury. [¶] (2) The attorney continues to represent the plaintiff regarding the specific subject matter in which the alleged wrongful act or omission occurred. [¶] (3) The attorney willfully conceals the facts constituting the wrongful act or omission when such facts are known to the attorney, except that this subdivision shall toll only the four-year limitation. [¶] (4) The plaintiff is under a legal or physical disability which restricts the plaintiff's ability to commence legal action."

Plaintiff contends that the statute of limitations was tolled during the period 2007 through 2009, as she was under a physical disability within the meaning of subdivision (d) of section 340.6. Specifically, the second amended complaint states: "Plaintiff Gamze suffered from disability from about 2007 to 2009, which limited her functional mental and physical capacity to work, carry out her daily activities and/or pursue any legal action from about 2007 to 2009. [¶] During this time, Plaintiff Gamze was on disability from work and undergoing aggressive treatment." Plaintiff maintains that the trial court erred in sustaining defendant's demurrer given the tolling allegations of the complaint concerning her physical and mental disabilities.

Defendants sought to disprove plaintiff's disability by pointing out that plaintiff alleged in her complaint that from the time she discharged defendant in early 2007 until October 2009, plaintiff and defendant discussed and agreed to mediate or arbitrate any fee dispute between the parties, as well as by noting that plaintiff continued to litigate the actions in which defendant had previously represented her.

Section 351 et seq. identifies certain situations which affect the running of the statute of limitations, including the absence of the defendant from the state (§ 351), the minority or insanity of the plaintiff (§ 352), the plaintiff's incarceration (§ 352.1), and the existence of a state of war which prevents the plaintiff from commencing an action

(§ 354). The listed situations have been deemed a "legal or physical disability which restricts the [] ability to commence legal action" pursuant to section 340.6. (*Bledstein v. Superior Court* (1984) 162 Cal.App.3d 152, 161-162.) Plaintiff contends that because she "was on chemotherapy and restricted in her mental capacities and under psychiatric care," she was disabled within the meaning of the statute.

The physical disabilities included in section 351 et seq. – the absence of the defendant from the state, the plaintiff's incarceration, a state of war – are those which physically prevent a plaintiff from commencing an action, not just situations that make a lawsuit more difficult to file and prosecute. Thus, had plaintiff alleged that, during the relevant period, she was bed-ridden or hospitalized on account of her physical and mental maladies, she could plausibly argue that she was physically disabled from filing this lawsuit. She did not so allege, and indeed made clear that she was at least intermittently legally and physically able to commence the action as, by her own account, she participated in a mediation and in the continuing litigation against her ex-husband. Consequently, we agree with the trial court's conclusion that the complaint failed to allege facts sufficient to toll the statute of limitations pursuant to section 340.6, subdivision (d).

Plaintiff also maintains that her complaint was not time-barred under the doctrine of equitable tolling. However, this doctrine does not apply to section 340.6. (*Gordon v. Law Offices of Aguirre & Meyer* (1999) 70 Cal.App.4th 972, 980.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ARMSTRONG, Acting P. J.

We concur:

MOSK, J.

KRIEGLER, J.